No. 45110-7-II

**IN THE COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON**

LEON PEOPLES,

Appellants,

v.

PUGET SOUNDS BEST CHICKEN, INC. et al.,

Respondents.

APPELLANTS' OPENING BRIEF

THADDEUS P. MARTIN, LLC
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I. INTRODUCTION

The Trial Court overstepped its bounds by dismissing a meritorious discrimination case brought pursuant to RCW 49.60.et.seq. and common law, despite the fact that the Appellate Courts for this State have repeatedly commanded that such cases generally are not susceptible to summary resolution and almost always involve questions of fact for a jury to decide. The appellant's common law claims pre-dated the 1917 federal enclave of JBLM.

Appellant Leon Peoples, a homosexual African American male, endured outrageous discrimination based on his sexual orientation directly from a manager while working for Respondent, Puget Sounds Best Chicken that conducted business as "Popeye's."

This is a case that should have played out before a jury and it was error for the Trial Court to dismiss it based on summary judgment standards. It respectfully suggests that had summary judgment standards been appropriately applied to the facts of this case, it never would have been dismissed.

II. ASSIGNMENTS OF ERROR

1. The Trial Court erred by misapplying the summary judgment standards applicable to employment discrimination cases.

2. The Trial Court erred by dismissing Appellant's sexual orientation lawsuit brought under 49.60 by ruling that it did not have jurisdiction when case law clearly states that the Trial Court had concurrent jurisdiction to hear this matter.

III. ISSUES RELATING TO ASSIGNMENTS OF ERROR

1. Did the Trial Court misapply the rules of summary judgment, when it dismissed on summary judgment grounds Appellant's claims brought under RCW 49.60 and common law, ruling that it did not have jurisdiction over this personal injury claim? CP 56-57.

IV. STATEMENT OF FACTS

A. Factual Background

In this case the defense appears not to be challenging the factual sufficiency of Appellant's claims. This is for obvious reasons because according to Appellant's amended complaint, the operable pleading, while employed at JBLM's Popeye's location the Appellant was subject to extreme discrimination based on his sexual orientation including stating in front of coworkers "cause you know how gays whine about doing work"; "Look! Look how he walks...you can tell he's on the homo team"; "He's probably the one that gets fucked; (while laughing at Appellant); those

faggots complain complain complain!"; calling Appellant a "faggot", fairy" and sissy on repeated occasions in front of others. CP 3-4.

In addition it is noted that Respondent Bennie Martin who was the store manager at that location took such conduct and actions. CP 3-4. Based on such horrific misconduct on December 31, 2012 Appellant filed this lawsuit. CP 1-6. On January 14, 2013 an amended complaint was filed. Id.

On April 30, 2013 the Respondent answered and asserted an affirmative defenses (not including lack of subject matter jurisdiction among such defenses) and admitted within Respondent's answer that Appellant was a resident of Pierce County as well as the fact that "Puget Sound's Best Chicken!" was and is a corporation doing business within Pierce County Washington. CP 7-11. The declaration of Steven Downs a purported officer of Popeye's Chicken admits that Popeye's operates eight restaurants in western Washington presumptively the other seven being outside the boundaries of JBLM. CP 24-25.

B. Procedural History

This case was filed on December 31, 2012. (CP 1-6). Within the complaint, Appellant brought claims against the Respondent for, among other things, discrimination based on sexual orientation. Respondent filed a Motion to Dismiss based on CR 12(b)(1) and CR 56, prior to any

substantial discovery. CP 15-23. On June 3, 2013, Appellant filed his response. (CP 26-44). On June 7, 2013, Respondent filed their reply. CP 47-55.

On June 14, 2013, Respondent's Motion for Summary Judgment was heard before the Honorable Gerald Johnson. (RP 6/14/13). After oral argument, Judge Johnson granted Respondent's Motion for Summary Judgment with respect to all of Appellant's claims and dismissed the case.

This appeal timely followed.

V. LEGAL DISCUSSION

A. Rules Applicable to Motion for Summary Judgment and Discrimination Cases.

Appellate courts review a Trial Court's grant of summary judgment *de novo, Briggs v. Nova Services*, 166 Wn.2d 794, 801, 213 P.3d 910 (2009).

When considering a motion for summary judgment, all facts must be considered in a light most favorable to non-moving party and all facts submitted and all readable inferences should be construed in such manner. See *Rice v. Offshore Systems, Inc.* 167 Wn. App. 77, 88, 272 P.3d 865 (2012), citing to *Sangster v. Albertson's, Inc.*, 99 Wn. App. 156, 160, 991, P.2d 675 (2010). Summary judgment should rarely be granted in employment discrimination cases. Id. In order to overcome a motion for

summary judgment in discrimination case there is no requirement that the aggrieved employee produced "smoking gun evidence of a discriminatory and/or a retaliatory intent. See *Rice v. Offshore Systems, Inc.* 167 Wn App. at 89; *Selstead v. Washington Mutual Savings Bank* 69 Wn. App. 852, 860, 851 P.2d 716 (1993). Circumstantial, indirect and inferential evidence is sufficient to overcome an employer's motion for summary judgment in a discrimination case. Id.

The reason why summary judgment is disfavored in employment discrimination cases is because "the decision as to the employer's true motivation plainly is one reserved to the trier fact." See *Lowe v. City of Monrovia* 775 F.2d 998, 9008 – 09 (No. 9th Cir. 1985) citing to *Peacock v. Duval* 694 F.2d 664, 646 (9th Cir. 1982). It is well established that the "employer's intent to discriminate is a ""a pure question of fact to be left to the trier fact..." Id. An employer's true motivation in an employment decision is rarely easy to discern and "without a search inquiry into these motives, those acting for impermissible motives could easily mask their behavior behind a complex web of *post hoc* rationalizations." Id.

B. Pierce County Superior Court Has Concurrent Jurisdiction over Claims Arising out of Events Occurring on JBLM.

The Respondent in this action did not dispute that this court has personal jurisdiction not only against Popeye's but the individually named

Respondent. Under Division II's opinion in the case of *Mendoza v. Neudorfer Engineers, Inc.*, 145 Wn. App. 146, 185 P.3d 1204, the state court system (including Pierce County Superior Court) has concurrent jurisdiction over claims such as this case involving a species of personal injury. As stated in 16 WA Prac § 0.17 under the heading of "federal property and state subject matter jurisdiction" the rules are as follows:

> If a plaintiff sustains an injury on federal property, there may be concurrent jurisdiction by both the federal government and the state government. Under the principles of cession" a state relinquishes exclusive jurisdiction to the federal government. However, while exclusive **legislative** jurisdiction is ceded to the federal government, state courts are **not** prevented from exercising jurisdiction over personal injury claims based on events occurring in the territory governed by federal law. Thus, it was error for the trial court to dismiss a claim brought by a worker who was injured at Ft. Louis by the alleged negligence of an employee of an engineering company performing services at the same job site.

(Emphasis added), citing to *Mendoza.*

Such a proposition is consistent with the long-standing principle that because superior courts are courts of general jurisdiction the lack of subject matter jurisdiction will only be found under compelling circumstances such as when it is explicitly limited by the legislature or an act of Congress. See In re: *Marriage of Owen and Phillips*, 126 Wn. App

487, 108 P.3d 824 (2005), *ZDI Gaming, Inc. state ex Rel, Washington State Gambling Commission*, 173 Wn. 2d 608, 268 P.3d 929 (2012). Respondents attempt to evade the reach of the *Mendoza* case by dismissing it in a rather "*ipse dixit*" by asserting without analysis and authority that the claims brought by the appellant do not constitute "personal injury claims". (CP 18). As will be explored below that is inconsistent with the law.

There is nothing within the *Mendoza* opinion that any way suggests that it is addressing only claims brought under a "negligence theory". Appellant brings a variety of discrimination claims as well as a tort claim for intentional infliction of emotional distress and negligence claims relating to the hiring, training and supervision and retention of Mr. Martin, appellant's primary antagonist. These claims are not purely derivative of appellant's statutory harassment claims and under Washington law could have been sued upon separately as independent torts. Claims of intentional infliction of emotional distress involve a type of personal injury claim and are governed by the same statute of limitations generally applied to claims for personal injury. See *Cox v. Oasis Physical Therapy, PLC*, 153 Wn. App. 176 192, 222 P.3d 119 (2009), RCW 4.16.080(2), (Claim for intention infliction of emotional

distress can be brought within the State of Washington when someone has been a victim of slurs and harassment in the workplace.)

In that regard the case of *Contreras v. Crown Zellerbach Corp.*, 88 Wn. 2d 735, 741, 565 P.2d 1173 (1977) is directly on point. It is noted that the principles espoused in *Contreras* were most recently reaffirmed by our supreme court in *Robel v. Roundup Corp.*, 148 Wn. 2d 35, 51-52, 59 P.3d 611 (2002). Contreras, a Hispanic American was subjected to a number of racial slurs in the work environment and sued his employer under an intention infliction of emotional distress theory. The supreme court in *Contreras* found such a theory to be viable due to the recognition that "the relationship between the parties is a significant factor in determining whether liability should be imposed" for intentional infliction of emotional distress. Id. at 741. The *Contreras* court emphasized "the added impetus" for permitting an outrage claim against an employer under said circumstances is the fact that "when one is in a position of authority, actual or apparent, has allegedly made racial slurs and jokes and comments" the ability to find the conduct to be "beyond the pale of human decency" becomes much easier.

In this case, a reasonable jury could have found the conduct of Respondent Bennie Martin to be negligent under common law and "outrageous." It is respectfully suggested that our work environment

should have well evolved past the point where in order to have the benefit of an employment an individual has to suffer through a borage of slurs directed towards their "sexual orientation." If in fact the jury finds that such conduct occurs there's simply no question that under the *Contreras* and *Robel* Appellant has a viable claim for intentional infliction of emotional distress.[1]

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[1] Under the same principles it is noted that Appellant also has a viable claim for negligent "hiring, training, supervision and retention" relating to the company's failure to control the conduct of Mr. Martin. Ultimately the viability of such tort claims turn on the question of whether or not it can fairly be said that Mr. Martin was acting within his "scope of employment" when engaging in such misconduct and whether or not respondiate's superior principles have application. See *LaPlant v. Snohomish County*, 162 Wn. App. 476, 271 P.3d 254 (2011). Suggested that the issue of whether or not Mr. Martin was operating within "the scope of his employment" when engaging in the alleged conduct, is a subject well beyond the scope of Respondent's current motion for summary judgment. The moving party has the responsibility to raise in a summary judgment motion all the issues on which it believes it's entitled to summary judgment in a clear and unequivocal fashion. See *White v. Kent Medical Center, Inc.*, P.S. 61 Wn. App. 163 168, 810 P.2d 4 (1991). It is improper for a moving party in a summary judgment proceedings to try to ambush the opposition by raising new issues in rebuttal on issues that were not clearly stated within the parties' original moving papers. Id. Additionally, a court should not consider issues when there is only passing treatment of an issue and lack of reasoned argument. See *Palmer v. Jensen*, 81 Wn. App. 148, 153 913 P.2d 413 (1996). At Page 7 of its memorandum the defense makes a passing reference to the case of *Francom v. Costco Wholesale Corp.*, 88 Wn. App. 845, 991 P.2d 1182 (2000), citing it for the proposition that plaintiff's claims are "duplicative of the discrimination claims". As the defense has failed to provide any reasoned analysis of such an issue it is difficult to respond. As discussed in *Francom* at 864-65 simply because tort claims are being brought contemporaneous with statutory discrimination claims does not necessarily mean that such claims are "duplicative" and depending on the circumstances the case law is supportive of bringing both such claims at the same time. See *Chea v. Men's Wearhouse, Inc.*, 85 Wn. App. 405, 412, 932 P.2d 12661 (1997), as such issues are not fully briefed within Respondent's opening moving papers they will not be discussed further herein. Other than to note that a claim of "negligent supervision" etc. is clearly a species of personal injury claims that would otherwise fall under the coverage of the above-cited *Mendoza* opinion. Also, Respondents are incorrect that negligent supervision was first recognized by the Washington State Supreme Court in the case of *LaLonde v. Smith*, Wn. 2d 167, 234 P.2d 893 (1951). As discussed in *LaLonde* at Page 71, even prior to the *LaLonde* opinion the Washington State Supreme Court had recognized an employer's liability for the negligent employment and retention of an incompetent employee which

The *Mendoza* opinion in this is dispositive. This court has concurrent jurisdiction over Appellant's tort claims under the terms of that opinion which is a Division II opinion thus controlling. Further, even if we assume arguendo that suggested by the defense it is incumbent upon Appellant to show that such claims could be brought in 1917 when JBLM was acquired by the federal government, it is far from clear that such claims did not exist at that time and that an intentional infliction of emotional claim did not exist at that time if not decades before. *Justin Grimsby v. Samson*, 85 Wn. 2d 52, 58, 530 P.2d 291 (1985) even prior to *Grimsby* Washington courts had allowed recovery for mental anguish and distress in cases that involved malice or wrongful intent. The law prior to *Grimsby* is best articulated in the 1921 case of *Anderson v. Pantages Theater, Co.*, 114 Wn. 24, 30, 194 P. 813 (1921) which provides:

> "But it is said that there was no personal injury inflicted up the respondent, and hence there can be no recovery for anything other than the breach of contract. But this is not the rule. The act alleged in itself carries with it the elements of an assault upon the person. In such cases the personal indignity inflicted, the feeling of humiliation and disgrace engendered and the consequent mental suffering are elements of actual

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would make the employer liable for the injuries inflicted by that employee upon a third party. *LaLonde* cites to the case of *Matsuda v. Hammond*, 77 Wn. 120, 137 P. 328 (1913) which suggests that an employer can be liable for the acts of an employee even if such acts involve an intentional tort when it is shown that such actions generally fall within the scope of the employee's employment. See also *McQueen v. People's Store Co.*, 97 Wn. 387, 166 P. 626 (1917). Thus it cannot be said that as of 1917 Washington would not have recognized a claim for negligent supervision hiring and the like.

> damage for which a compensatory award may be made. This we have held since the early history of the court."

Id.

In *Anderson,* the court allowed emotional distress damages for African-American ticket holders who were not permitted entrance into a movie theater. The court stated that the event had "the elements of an assault upon the person" did not mean an actual physical invasion or contact with the individual's body. The cases holding this date as far back as 1892 as supportive of such a proposition. See *Cunningham v. Seattle Elec. RRy. and Power Co.*, 3 Wn. App. 471, 28 P. 475 (1892); (unlawful ejectment from train). *Wilson v. Northern Pac. R. Co.*, 5 Wn. 621, 32 P. 468 (1893) (unlawful ejectment from train without any physical invasion); *McClure v. Campbell*, 42 Wn. 252, 84 P. 825 (1906) (wrongful eviction from home without physical invasion); a few. Here, what is at issue is "intentional wrongdoing" and malicious misconduct; thus, even under the common law as existed in 1917 Appellant would be entitled to recovery. Thus to the extent that the Respondents are asserting that as of 1917 such law did not exist within the State of Washington the Respondents are mistaken.

The trial judge here was confused and misapplied the law. Judge Johnson first ruled "this is not a jurisdictional issue" and then ruled "this is

not my jurisdiction." RP 14. The trial Court then ruled that the Appellant did not even have negligence claims recognized under Washington law had this case been bought prior to 1917 under the facts of this case. RP 15. This is clearly wrong.

The trial court further erred in dismissing individual defendant Bennie Martin, when there was no motion to dismiss his claims and he is not protected by any federal enclave theory. This was clearly an error of law.

C. Appellant's Statutory Discrimination Claims.

Discrimination is a species of intentional tort. See *Cagle v. Burns and Roe, Inc.*, 106 Wn. 2d 911, 726 P.2d 434 (1986). It has long been recognized that a three-year personal injury statute of limitation applies to discrimination claims because it involves an invasion of a legally protected interest of the plaintiffs. See *Lewis v. Lockheed Ship Building and Const. Co.*, 36 Wn. App. 607, 612, 676 P.2d 545 (1984). Discrimination is in the nature of a personal injury claim, tort damages are available as "actual damages" within the meaning of RCW 49.60.030. See *Ellingson v. Spokane Mortgage Co.*, 19 Wn. App. 48, 57, 573 P.2d 389 (1978).

Thus, the rule in *Mendoza* relating to personal injury claims also would have full and complete application to Appellant's discrimination claims brought pursuant to RCW 49.60. et. seq.[2]

For the reasons stated above Respondents' motion for summary judgment should have been denied. Under the controlling *Mendoza* opinion Appellant's personal injury claims are properly before this court under principles of "concurrent jurisdiction". There is simply no question that the court has personal jurisdiction over both the Appellant and the individual and corporate Respondents. As such under *Mendoza* the court is fully authorized and has subject matter jurisdiction to consider Appellant's personal injury type claims. Alternatively, the court should find as a matter of law that both claims of intentional infliction of

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[2] Alternatively, discrimination under Washington common law also constitutes a tort. See *Roberts v. Dudley*, 140 Wn. 2d 58, 993 P.2d 901 (2000); *Bennett v. Hardy*, 113 Wa. 2d 912, 784 P.2d 1258 (1990); *Wahl v. Dasch Point Family Dental Clinic, Inc.*, 144 Wn. App. 34, 181 P.3d 864 (2008). Thus, to the extent that the court may have been inclined to hold that plaintiff cannot bring statutory discrimination claim, plaintiff should be permitted to amend his complaint to include a "common law" discrimination claim pursuant to the *Roberts v. Dudley* option, plaintiff's complaint should be construed broad enough already to include such a claim under the principles set forth in the supreme court's opinion in *Champagne v. Thurston County*, 163 Wn. 2d 69, 84, 178 P.3d 936 (2008) (under "fair notice" standards set forth within CR 8(a) the issue is whether or not the totality of the complaint places the opposing party on notice of the nature of the claims brought, and claims which are not separately referenced as a specific cause of action nevertheless may be considered). Plaintiff's complaint provides clear notice as to what facts plaintiff is seeking relief upon, and the general nature of the relief being sought. Under CR 8(a) standards that should be more than suffice to place the defense on notice of potential common law discrimination claims. What is at issue is notice pleading and not some hyper technical code pleadings as formerly was the case within many jurisdictions before the adoption of the Federal Rules of Civil Procedures.

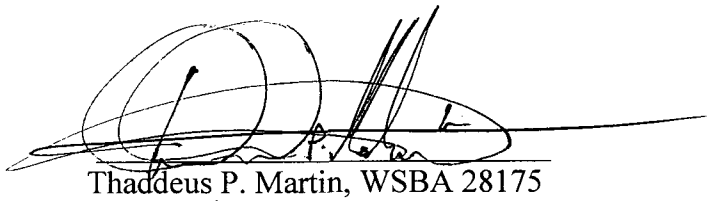
emotional distress and negligent supervision well pre-dated the date in which JBLM was acquired by the federal government, thus actionable under the doctrines applicable to "federal enclaves".

V. CONCLUSIONS

For the reasons stated above, the Trial Court's dismissal of appellant's lawsuit should be subject to reversal in this case and remanded back for trial. This is a case of concurrent jurisdiction and the trial court had authority to hear this matter. A Pierce County Superior Court and jury following remand of this case should resolve the issues presented by this case.

DATED this 10th day of January, 2014.

LAW OFFICE OF THADDEUS P. MARTIN



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I AM NOT A PARTY TO THIS ACTION AND THAT I PLACED FOR SERVICE ON COUNSEL OF RECORD THE FOREGOING DOCUMENT VIA EMAIL FOLLOWED BY LEGAL MESSENGER, ON THE 10 DAY OF January, 2014.

PERSONS SERVED:

Joshua C. Allen Bower
Benjamin J. Stone
Danielle N. Granatt
Veris Law Group PLLC
1809 7th Ave Ste 1400
Seattle, WA 98101

SIGNED Kara Denny
KARA DENNY, LEGAL ASSISTANT

EXHIBIT 1

SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF PIERCE

LEON PEOPLES, individually Plaintiff, v. PUGET SOUNDS BEST CHICKEN!, INC./DBA POPEYE'S, a Washington corporation; and BENNIE MARTIN, individually; and "JANE DOE" MARTIN, and the matrimonial community composed thereof. Defendants.	NO. 12-2-16052-5 AMENDED COMPLAINT FOR DAMAGES

COMES NOW the Plaintiff, by and through his attorneys of record Thaddeus P. Martin and Xavier Davis of Thaddeus P. Martin & Associates, LLC in the above-entitled matter to allege and complain as follows:

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I. INTRODUCTION

1.1 This is a lawsuit against Puget Sounds Best Chicken!, INC./DBA Popeye's, a Washington Corporation; and Bennie Martin, individually, brought under the laws of the State of Washington. Defendants have failed to take reasonably adequate action to correct the pervasive and severe sexual-orientation based harassment, hostile environment, and physically and mentally harmful disparate treatment of a homosexual employee.

II. JURISDICTION

2.1 This Court has jurisdiction over this matter under RCW 49.60, *et seq.*

III. VENUE

3.1 The events giving rise to this lawsuit occurred in Pierce County, Washington. Venue is proper in this Court.

IV. PARTIES

4.1 Plaintiff is a homosexual African American male and a resident of Pierce County, Washington.

4.2 Defendant Puget Sounds Best Chicken!, INC./DBA Popeye's ("Popeyes") is a Washington corporation doing business in Pierce County, Washington.

4.3 Defendant Bennie Martin was the site manager during the time the incidents surrounding this lawsuit occurred.

4.4 Defendant "Jane Doe" Martin is believed to be the wife of Bennie Martin.

V. FACTS

5.1 Plaintiff incorporates all preceding paragraphs of this complaint as though set forth fully herein.

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5.2 This claim arises as a result of the wrongful, tortious, and discriminatory acts and/or omissions of Popeye's management and staff.

5.3 On information and belief, defendant Bennie Martin is a resident of Pierce County, Washington. At all times pertinent and material to this action, Bennie Martin was the supervisor over the Plaintiff.

5.4 Plaintiff is a homosexual male who was employed by Popeye's as a line cook.

5.5 During a 4 month period of Plaintiff's employment at Popeye's, he was subjected to severe, pervasive, and unwanted sexual-orientation based harassment and discrimination at the hands of his manager. This harassment and discrimination created a work environment which was hostile and offensive to Plaintiff, and has negatively effected the terms and conditions of Plaintiff's employment.

5.6 Store manager, Defendant Bennie Martin, insulted and harassed the Plaintiff including based on his sexual orientation, but not limited to:

5.6.1 Defendant Martin told other employees in Plaintiffs presence to help Plaintiff pick up the slack, "Cause you know how gays whine about doing work";

5.6.2 Defendant Martin told other employees in Plaintiffs presence, "Look! Look how he walks... You can tell he's on the "homo" team;

5.6.3 Defendant Martin told other employees in Plaintiffs presence, "He's probably the one that get's fucked," and laughed out loud after he said it;

5.6.4 Defendant Martin told other employees in Plaintiffs presence, "Those faggot's, complain, complain, complain!" And laughed afterwards;

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5.6.5 Defendant Martin yelled at other employees calling them "faggot", "ferry", and "sissy" in Plaintiffs presence on at least six separate occasions including after Plaintiff asked Defendant to stop;

5.6.6 Defendant Martin knew that Plaintiff was homosexual, and told Plaintiff not to take any offense to his conduct;

5.6.7 Defendant Martin yelled at Plaintiff in other employees presence that he heard plaintiff was gay;

5.7 Although Plaintiff informed Popeyes about the aforementioned hostile, harassing and discriminatory conduct of Defendant Martin, Defendants failed to take reasonably adequate action to correct this unlawful, tortious, and discriminatory conduct. Regardless, the unlawful behaviors are imputed to the employer because it was the store manager that precipitated and engaged in this conduct.

5.8 Defendants knew or should have known of Defendant Martin's hostile behaviors towards the Plaintiff working under his direct supervision. The Defendants allowed and created the hostile work environment for the Plaintiff.

VI. CAUSES OF ACTION

6.1 **Sexual Orientation Discrimination and/or Harassment (RCW 49.60, *et seq.*):** Plaintiff incorporates all preceding paragraphs as though fully set forth herein as a proximate cause of Plaintiff's injuries. Although Plaintiff states an individual cause of action, Plaintiff notes that each cause of action is interrelated to all of the facts set forth in this complaint.

6.2 **Hostile Work Environment (Sexual Orientation) (RCW 49.60, *et seq.*):** Plaintiff incorporates all preceding paragraphs as though fully set forth herein as a proximate cause of

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Plaintiff's injuries. Although Plaintiff states an individual cause of action, Plaintiff notes that each cause of action is interrelated to all of the facts set forth in this complaint.

6.3 **Disparate Treatment (Sexual Orientation) (RCW 49.60, *et seq.*):** Plaintiff incorporates all preceding paragraphs as though set forth fully herein as a proximate cause of Plaintiff's injuries. Although Plaintiff states an individual cause of action, Plaintiff notes that each cause of action is interrelated to all of the facts set forth in this complaint.

6.4 **Disparate Impact (Sexual Orientation) (RCW 49.60, *et seq.*):** Plaintiff incorporates all preceding paragraphs as though set forth fully herein as a proximate cause of Plaintiff's injuries. Although Plaintiff states an individual cause of action, Plaintiff notes that each cause of action is interrelated to all of the facts set forth in this complaint.

6.5 **Negligent Hiring, Training, Supervision, and Retention:** Plaintiff incorporates all preceding paragraphs as though set forth fully herein as a proximate cause of Plaintiff's injuries. Although Plaintiff states an individual cause of action, Plaintiff notes that each cause of action is interrelated to all of the facts set forth in this complaint.

6.6 **Intentional Infliction of Emotional Distress (Outrage):** Plaintiff incorporates all preceding paragraphs as though set forth fully herein as a proximate cause of Plaintiff's injuries. Although Plaintiff states an individual cause of action, Plaintiff notes that each cause of action is interrelated to all of the facts set forth in this complaint.

VII. DAMAGES

7.1 Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

7.2 As a direct and proximate result of Defendants' unlawful, tortious, negligent, discriminatory acts and/or omissions, Plaintiff has sustained economic and non-economic

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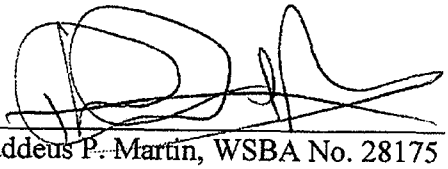
damages, the amount, nature and extent of which are unknown at this time but which will be set forth prior to trial.

VIII. PRAYER FOR RELIEF

8.1 WHEREFORE, Plaintiff prays that the Court enter judgment against the Defendants, jointly and severally, for generally and special damages as allowed by law, for attorneys' fees and costs incurred in maintaining this action, and for prejudgment interest and such other relief as the Court may deem just.

Dated this 14 day of January, 2013.

THADDEUS P. MARTIN & ASSOCIATES LLC



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